

Assembly Bill No. 1933

Passed the Assembly August 31, 2012

Chief Clerk of the Assembly

Passed the Senate August 31, 2012

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2012, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 14585 and 14596 of the Public Resources Code, relating to beverage containers, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1933, Gordon. Beverage containers: handling fees: enforcement.

(1) The existing California Beverage Container Recycling and Litter Reduction Act requires a distributor of specified beverage containers to pay a redemption payment to the Department of Resource Recycling and Recovery, for each beverage container, as defined, sold or transferred, for deposit in the California Beverage Container Recycling Fund. From the fund, the department is continuously appropriated the amount necessary to pay handling fees to provide an incentive for the redemption of empty beverage containers in convenience zones. The department is required to pay a handling fee in an amount determined by subtracting the amount of the statewide average per-container cost to redeem beverage containers incurred by a certified recycler that does not receive a handling fee from the statewide average per-container cost incurred by recycling centers that receive handling fees, based on a survey the department is required to conduct at least once every 2 years to determine the actual cost for the redemption of beverage containers.

This bill would require the per-container handling fee to be set, as of the effective date of this act, until March 1, 2013, at an amount that is not less than the amount of the per-container handling fee that was in effect on July 1, 2011. The bill would authorize the department to update the methodology and scrap values used for calculating the handling fee, as specified. The bill would make an appropriation by increasing the amount that the department is authorized to pay from a continuously appropriated fund.

(2) Existing law requires any person importing more than a 100 pounds of aluminum, bimetal, or plastic beverage container

material, or more than 1,000 pounds of glass beverage container material, into the state to report the material and to provide an opportunity for inspection and prohibits any person from falsifying documents required pursuant to the act or the regulations adopted by the department. A violation of the act is a crime.

This bill would decrease the amount of materials for which a person is required to report to the department to 25 pounds of empty aluminum, bimetal, or plastic beverage container material, or more than 250 pounds of empty glass beverage container material, and would additionally require the person to provide the department with certain documentation regarding those materials.

The bill would require a vehicle entering the state that contains more than 25 pounds of empty beverage container material to pass through the nearest plant quarantine inspection station and obtain proof of inspection from the department. The bill would authorize the department to enter into a interagency agreement with the Department of Food and Agriculture to implement this requirement.

The bill would provide that an operator of a vehicle that contains more than 25 pounds of empty beverage container material is in violation of the act if the operator fails to stop at, or willfully avoids, a plant quarantine inspection station, as specified. The bill would provide that a 2nd or subsequent violation of this requirement within 3 years of a prior conviction is punishable as a misdemeanor. The bill would impose a state-mandated local program by creating new crimes.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(4) This bill would declare that it is to take effect immediately as an urgency statute.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 14585 of the Public Resources Code is amended to read:

14585. (a) The department shall adopt guidelines and methods for paying handling fees to supermarket sites, nonprofit convenience zone recyclers, or rural region recyclers to provide an incentive for the redemption of empty beverage containers in convenience zones. The guidelines shall include, but not be limited to, all of the following:

(1) Handling fees shall be paid on a monthly basis, in the form and manner adopted by the department. The department shall require that claims for the handling fee be filed with the department not later than the first day of the second month following the month for which the handling fee is claimed as a condition of receiving any handling fee.

(2) The department shall determine the number of eligible containers per site for which a handling fee will be paid in the following manner:

(A) Each eligible site's combined monthly volume of glass and plastic beverage containers shall be divided by the site's total monthly volume of all empty beverage container types.

(B) If the quotient determined pursuant to subparagraph (A) is equal to, or more than, 10 percent, the total monthly volume of the site shall be the maximum volume which is eligible for a handling fee for that month.

(C) If the quotient determined pursuant to subparagraph (A) is less than 10 percent, the department shall divide the volume of glass and plastic beverage containers by 10 percent. That quotient shall be the maximum volume that is eligible for a handling fee for that month.

(3) (A) On and after the effective date of the act amending this section during the 2011–12 Regular Session, and until March 1, 2013, the department shall pay a handling fee per eligible container in the amount determined pursuant to subdivisions (f) and (g).

(B) On and after July 1, 2014, the department shall pay a handling fee per eligible container in the amount determined pursuant to subdivision (f).

(4) If the eligible volume in any given month would result in handling fee payments that exceed the allocation of funds for that month, as provided in subdivision (b), sites with higher eligible monthly volumes shall receive handling fees for their entire eligible monthly volume before sites with lower eligible monthly volumes receive any handling fees.

(5) (A) If a dealer where a supermarket site, nonprofit convenience zone recycler, or rural region recycler is located ceases operation for remodeling or for a change of ownership, the operator of that supermarket site nonprofit convenience zone recycler, or rural region recycler shall be eligible to apply for handling fees for that site for a period of three months following the date of the closure of the dealer.

(B) Every supermarket site operator, nonprofit convenience zone recycler, or rural region recycler shall promptly notify the department of the closure of the dealer where the supermarket site, nonprofit convenience zone recycler, or rural region recycler is located.

(C) Notwithstanding subparagraph (A), any operator who fails to provide notification to the department pursuant to subparagraph (B) shall not be eligible to apply for handling fees.

(b) The department may allocate the amount authorized for expenditure for the payment of handling fees pursuant to paragraph (1) of subdivision (a) of Section 14581 on a monthly basis and may carry over any unexpended monthly allocation to a subsequent month or months. However, unexpended monthly allocations shall not be carried over to a subsequent fiscal year for the purpose of paying handling fees but may be carried over for any other purpose pursuant to Section 14581.

(c) (1) The department shall not make handling fee payments to more than one certified recycling center in a convenience zone. If a dealer is located in more than one convenience zone, the department shall offer a single handling fee payment to a supermarket site located at that dealer. This handling fee payment shall not be split between the affected zones. The department shall stop making handling fee payments if another recycling center certifies to operate within the convenience zone without receiving payments pursuant to this section, if the department monitors the performance of the other recycling center for 60 days and determines that the recycling center is in compliance with this division. Any recycling center that locates in a convenience zone, thereby causing a preexisting recycling center to become ineligible to receive handling fee payments, is ineligible to receive any handling fee payments in that convenience zone.

(2) The department shall offer a single handling fee payment to a rural region recycler located anywhere inside a convenience

zone, if that convenience zone is not served by another certified recycling center and the rural region recycler does either of the following:

(A) Operates a minimum of 30 hours per week in one convenience zone.

(B) Serves two or more convenience zones, and meets all of the following criteria:

(i) Is the only certified recycler within each convenience zone.

(ii) Is open and operating at least eight hours per week in each convenience zone and is certified at each location.

(iii) Operates at least 30 hours per week in total for all convenience zones served.

(d) The department may require the operator of a supermarket site or rural region recycler receiving handling fees to maintain records for each location where beverage containers are redeemed, and may require the supermarket site or rural region recycler to take any other action necessary for the department to determine that the supermarket site or rural region recycler does not receive an excessive handling fee.

(e) The department may determine and utilize a standard container per pound rate, for each material type, for the purpose of calculating volumes and making handling fee payments.

(f) (1) On or before January 1, 2008, and every two years thereafter, the department shall conduct a survey pursuant to this subdivision of a statistically significant sample of certified recycling centers that receive handling fee payments to determine the actual cost incurred for the redemption of empty beverage containers by those certified recycling centers. The department shall conduct these cost surveys in conjunction with the cost surveys performed by the department pursuant to subdivision (b) of Section 14575 to determine processing payments and processing fees. The department shall include, in determining the actual costs, only those allowable costs contained in the regulations adopted pursuant to this division that are used by the department to conduct cost surveys pursuant to subdivision (b) of Section 14575.

(2) Using the information obtained pursuant to paragraph (1), the department shall then determine the statewide weighted average cost incurred for the redemption of empty beverage containers, per empty beverage container, at recycling centers that receive handling fees.

(3) Except as provided in subdivision (g), the department shall determine the amount of the handling fee to be paid for each empty beverage container by subtracting the amount of the statewide weighted average cost per container to redeem empty beverage containers by recycling centers that do not receive handling fees from the amount of the statewide weighted average cost per container determined pursuant to paragraph (2).

(4) The department shall adjust the statewide average cost determined pursuant to paragraph (2) for each beverage container annually to reflect changes in the cost of living, as measured by the Bureau of Labor Statistics of the United States Department of Labor or a successor agency of the United States government.

(5) The cost information collected pursuant to this section at recycling centers that receive handling fees shall not be used in the calculation of the processing payments determined pursuant to Section 14575.

(g) (1) On and after the effective date of the act amending this section during the 2011–12 Regular Session, and until March 1, 2013, the per-container handling fee shall not be less than the amount of the per-container handling fee that was in effect on July 1, 2011.

(2) The department may update the methodology and scrap values used for calculating the handling fee from the most recent cost survey if it finds that the handling fee resulting from the most recent cost survey does not accurately represent the actual cost incurred for the redemption of empty beverage containers by those certified recycling centers.

SEC. 2. Section 14596 of the Public Resources Code is amended to read:

14596. (a) Any person importing more than 25 pounds of empty aluminum, bimetal, or plastic beverage container material, or more than 250 pounds of empty glass beverage container material, into the state, shall report the material to the department and provide the department with all of the following:

(1) Documentation on the source of the material.

(2) Documentation on the destination of the material.

(3) Any other information deemed necessary by the department as it relates to the importation of empty beverage container material.

(4) An opportunity for inspection, in accordance with the regulations adopted by the department.

(b) (1) (A) In addition to inspections required by the regulations adopted by the department pursuant to subdivision (a), a vehicle entering the state that contains more than 25 pounds of empty beverage container material shall pass through the nearest plant quarantine inspection station maintained pursuant to Section 5341 of the Food and Agricultural Code, and shall obtain proof of inspection from the department.

(B) The department may enter into an interagency agreement with the Department of Food and Agriculture to implement the requirements of this subdivision.

(2) The operator of a vehicle that contains more than 25 pounds of empty beverage container material is in violation of this chapter if the operator does any of the following:

(A) Fails to stop the vehicle at a plant quarantine inspection station.

(B) Willfully avoids a plant quarantine inspection station.

(C) Fails to stop upon demand of a clearly identified plant quarantine inspection station officer, an officer of the California Highway Patrol, or an officer of a state or local law enforcement agency, when the officer orders the operator to stop for the purpose of determining whether this operator is in violation of this section.

(c) The department may impose civil penalties pursuant to Section 14591.1 or take disciplinary action pursuant to Section 14591.2 for a violation of this section.

(d) Subdivision (c) does not prohibit the imposition of a criminal penalty pursuant to subdivision (a) of Section 14591 for a violation of subdivision (b). A second or subsequent violation of subdivision (b) within three years of a prior conviction of a violation of subdivision (b) shall be punishable as a misdemeanor.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to encourage the recycling of beverage containers, thereby protecting public health and safety and the environment, it is necessary that this act take effect immediately.

Approved _____, 2012

Governor